



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	09/08/03	Bill No:	SB 808
Tax:	Sales and Use	Author:	Karnette
Board Position:		Related Bills:	

BILL SUMMARY

This bill would reinstate the sales and use tax exemption for fuel and petroleum products (bunker fuel) sold to water common carriers.

ANALYSIS

Current Law

Under current law, sales of fuel and petroleum products to water common carriers are subject to tax.

Proposed Law

This bill would repeal and replace Section 6385 of the Sales and Use Tax Law to include a sales and use tax exemption for sales of fuel and petroleum products (bunker fuel) sold to water common carriers for immediate shipment outside this state for consumption in conduct of its business as a common carrier after the first out-of-state destination. The proposed exemption would require a water common carrier to only pay tax on the fuel needed to get from California to its first out-of-state destination. The proposed exemption would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date and would sunset as of January 1, 2014. This bill would also reinstate the existing Section 6385 without the sales and use tax exemption for bunker fuel as of January 1, 2014.

Background

Until July 15, 1991, sales of fuel and petroleum products to water, air, and rail common carriers were exempt from tax when used in the conduct of the carrier's common carrier activities after the first out-of-state destination. The exemption for bunker fuel purchased by qualified waterborne vessels was dependent upon the amount of bunker fuel on board the vessel prior to refueling. If the quantity of bunker fuel on board the vessel on arrival at the California port was sufficient to enable the vessel to reach its first out-of-state destination, then the bunker fuel loaded at the California port would have been entirely exempt from tax. However, if the quantity of bunker fuel needed on the voyage from the California port to the first out-of-state destination and the amount used while in port exceeded the quantity of fuel on board the vessel on arrival at the California port, the amount of that excess was subject to tax. The exemption was repealed in 1991 by AB 2181 (Ch. 85, 1991) and SB 179 (Ch. 88, 1991).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

As a result of the loss of the exemption, the Pacific Merchant Shipping Association sponsored AB 2396 (Ch. 905, 1992) to combat what they claimed was a disastrous tax law change. They argued that the repeal of the exemption for water common carriers resulted in a decline in the number of ships which bunker in California ports. The re-establishment of the exemption was designed to increase bunker activity in California.

Beginning January 1, 1993, as amended by Section 1.5 of Chapter 905 of 1992, Section 6385 once again granted an exemption for bunker fuel for certain uses. That measure, however, contained a sunset provision which would have repealed the exemption on January 1, 1998. Assembly Bill 366 (Ch. 615, 1997) extended the sunset provision until January 1, 2003, and also required the Legislative Analyst's Office (LAO) to study the effects of the bunker fuel exemption and prepare a report of their findings.

The LAO issued their report in 2002 on the effect of the bunker fuel exemption, and concluded "On this tax policy basis, we recommend that the Legislature remove the existing sunset for the current partial (sales and use tax) exemption for bunker fuel sales, and make the exemption permanent. This would result in the (sales and use tax) being levied in the future only on the portion of the fuel purchased in California which is consumed between California and the first out-of-state destination. This action would result in treating bunker fuel sales similarly to other export sales and place California ports on par with other U.S. out-of-state ports." The Pacific Merchant Shipping Association sponsored Senate Bill 145 (Perata) during the 2002 Legislative Session to extend the sunset date for the bunker fuel exemption until January 1, 2013. SB 145 passed the Legislature, but was vetoed by the Governor. The Governor's veto message included the following statement:

"While I would ordinarily sign this measure, the state's very difficult financial condition requires me to veto this bill because it would result in total state and local revenue losses in the range of \$22.3 to \$33.5 million depending on the consumption of bunker fuel. In the current fiscal environment, enacting a measure with such losses would not be prudent."

As a result of the Governor's veto of SB 145, the sales and use tax exemption for sales of bunker fuel sunset as of January 1, 2003.

COMMENTS

- 1. Sponsor and Purpose.** According to the author's office, this bill is sponsored by the Pacific Merchant Shipping Association and the International Long Shore Workers Union. The purpose of this bill is to reinstate the sales and use tax exemption for bunker fuel that was repealed as of January 1, 2003.
- 2. Sales tax law for air and rail common carriers.** Section 6357.5 of the Sales and Use Tax Law contains an exemption for fuel sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight. Fuel purchased for domestic flights is not included in the exemption.

Fuel sold to rail common carriers remains subject to the sales tax.

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- 3. The Board does not foresee any administrative problems with this measure.**
Reinstating the sales and use tax exemption for sales of fuel and petroleum products to water common carriers as proposed by this measure could be easily administered by the Board.

COST ESTIMATE

Some costs would be incurred in revising publications and notifying the public and Board staff. These costs would be absorbable.

REVENUE ESTIMATE

A detailed revenue estimate is pending.

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